

1 William S. Hoang (State Bar No. 269791)
whoang@travelers.com
2 USERY & ASSOCIATES
3 **Mailing Address: P.O. Box 2996**
4 **Hartford, CT 06104-2996**
Physical Address: 3333 Michelson Dr., Suite 100
Irvine, CA 92612
Tel: (917) 778-6680
5 Fax: (844) 571-3789

6 Attorneys for Plaintiff
7 TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10
11 TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA,

12 Plaintiff,

13
14 v.

15 SAFETY NATIONAL CASUALTY
16 CORPORATION,

17 Defendant.

Case No.:

**TRAVELERS PROPERTY
CASUALTY COMPANY OF
AMERICA’S COMPLAINT FOR
DECLARATORY RELIEF,
EQUITABLE INDEMNITY,
EQUITABLE SUBROGATION,
AND EQUITABLE
CONTRIBUTION**

DEMAND FOR JURY TRIAL

18
19
20
21
22
23 Plaintiff TRAVELERS PROPERTY CASUALTY COMPANY OF
24 AMERICA alleges and avers as follows:

25 **THE PARTIES**

26 1. Plaintiff Travelers Property Casualty Company of America
27 (“Travelers”) is, and at all relevant times was, an insurance company organized
28 under the laws of the State of Connecticut having its principal place of business in

1 Connecticut.

2 2. Travelers is informed and believes that defendant Safety National
3 Casualty Corporation (“Safety”) is, and at all relevant times was, an insurance
4 company organized under the laws of the State of Missouri, having its principal
5 place of business in the State of Missouri and is authorized to conduct business in
6 the State of California.

7 **JURISDICTION AND VENUE**

8 3. This Court has original jurisdiction under 28 U.S.C. § 1332 because
9 this is a civil action between citizens of different states in which the matter in
10 controversy is in excess of seventy-five thousand dollars (\$75,000.00), exclusive of
11 costs and interests.

12 4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because
13 a substantial part of the events giving rise to this claim occurred within the Eastern
14 District of California.

15 **BACKGROUND FACTS**

16 **The Travelers Policy**

17 5. Travelers issued policy number to Y-630-469P189A-TIL-17 to
18 Argonaut Investments, LLC (“Argonaut”), with effective dates of May 7, 2017 to
19 May 7, 2018 (the “Travelers Policy”). SVP is also named as an insured under the
20 Travelers Policy. The Travelers Policy provides that it is excess over any other
21 insurance that is available to the insured when the insured is added as an additional
22 insured on another policy.

23 **The Underlying Action**

24 6. On May 4, 2020, Steven Austin (“Austin”) filed an action entitled
25 *Steven Austin v. SVP Partners, LLC dba Sierra View Plaza, et al.*, in Fresno County
26 Superior Court, Case No. 20CECG01264 (the “Underlying Action”), alleging causes
27 of action for negligence and premises liability against SVP and others. A true and
28 correct copy of the complaint is attached as Exhibit 1.

7. In the Underlying Action, Austin alleges that on April 19, 2018, he was an employee of an O'Reilly's Auto Parts store located at 6405 N. Blackstone Avenue, Fresno, California (the "Property"). He further alleges that on April 19, 2018, he asked two suspicious subjects to leave the store. He alleges that after he asked the subjects to leave the store, one subject revealed a handgun inside his shirt, grabbed merchandise from the shelf, and wrestled him. Austin alleges that he was shot by one of the suspects during the altercation.

8. Travelers is informed and believes that SVP (defined within the lease as "Landlord") entered into a lease agreement with O'Reilly Auto Enterprises, LLC (defined within the lease as "Tenant") with respect to a store located at the Property. At the time of the alleged incident, and at all relevant times, the lease was in effect. The lease states, in pertinent part:

NINETEENTH: INDEMNITY – LIABILITY INSURANCE

... Tenant agrees to carry in responsible companies public liability insurance with limits of at least \$1,000,000 for injury to one person, \$5,000,000 for injury to persons in one accident ..., or a combined single limit of liability of \$5,000,000 subject to such self-risk retention limits as Tenant may deem appropriate, and to have Landlord named therein as an additional insured.

The Safety Policy

9. Travelers is informed and believes that Safety issued policy number GL 4043743 to O'Reilly Automotive Stores, Inc. effective March 1, 2018 to March 1, 2019, which provides commercial general liability coverage (the "Safety Policy").

10. Travelers is informed and believes that the Safety Policy contains an endorsement entitled "Additional Insured – Managers or Lessors of Premises", which provides in pertinent part:

Designation of Premises (Part Leased To You):

All locations owned by, leased to or occupied by the insured.

Name Of Person(s) Or Organization(s) (Additional Insured):

1 As required by written contract or agreement when such written
2 contract or agreement is executed prior to an occurrence, offense or
3 loss to which this endorsement applies, but only for the limits agreed to
4 in such contract or the Limits of Liability provided by this policy,
5 whichever is less. Any individually scheduled additional insureds shall
6 not be construed to override nor negate this blanket additional insured.

* * *

7 **A. Section II – Who Is An Insured** is amended to include as an
8 additional insured the person(s) or organization(s) shown in the
9 Schedule, but only with respect to liability arising out of the
10 ownership, maintenance or use of that part of the premises leased
11 to you and shown in the Schedule ...:

* * *

12 However:

- 13 1. The insurance afforded to such additional insured only
14 applies to the extent permitted by law; and
- 15 2. If coverage provided to the additional insured is required
16 by a contract or agreement, the insurance afforded to such
17 additional insured will not be broader than that which you
18 are required by the contract or agreement to provide for
19 such additional insured.

20 **Travelers' Tender and Defense of the Underlying Action**

21 11. Travelers tendered the defense of SVP as an additional insured on the
22 Safety Policy by email dated May 22, 2020, as it was claimed in the Underlying
23 Action that Austin was injured in an altercation at the Property. Attached hereto as
24 Exhibit 2, and incorporated herein by reference, is a copy of the May 22, 2020
25 tender.

26 12. Safety responded to the May 22, 2020 tender on June 5, 2020, denying
27 the tender. Attached hereto as Exhibit 3, and incorporated herein by reference, is a
28 copy of Safety's denial letter.

13 After several follow-up attempts by Travelers to urge Safety to
14 reconsider its denial, on April 18, 2022, Safety sent a letter confirming that "[SVP]
15 would be an additional insured under [Safety's] policy."

1 14. On May 5, 2022, Safety sent another letter stating that “[Safety] agrees
2 it has an obligation to defend [SVP] as an additional insured under our policy.”
3 Attached hereto as Exhibit 4, and incorporated herein by reference, is a copy of
4 Safety’s May 5, 2022 letter.

5 15. Despite Safety’s agreement that SVP is an additional insured under its
6 policy and that Safety has an obligation to defend SVP, Safety has failed to provide
7 a defense to SVP in the Underlying Action.

8 16. As a result of Safety’s failure to defend SVP, Travelers has been forced
9 to retain defense counsel to defend SVP in the Underlying Action, pursuant to the
10 Travelers Policy. Travelers has incurred attorneys’ fees in defending SVP in the
11 Underlying Action, and will continue to incur additional attorneys’ fees.

12 **FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF**

13 17. Travelers realleges and incorporates herein by reference each and every
14 allegation contained in paragraphs 1 through 16, inclusive, as though fully set forth
15 herein.

16 18. An actual and justiciable controversy has arisen between Travelers and
17 Safety in that Travelers contends, and Safety disputes, that Safety is obligated to
18 defend and indemnify SVP as an additional insured under the Safety Policy on a
19 primary and non-contributory basis to the Travelers Policy in the Underlying
20 Action.

21 19. Travelers seeks a judicial determination that Safety is obligated to
22 defend and indemnify SVP in the Underlying Action as an additional insured under
23 the Safety Policy on a primary and non-contributory basis.

24 20. Travelers requests that the Court resolve the present and actual
25 controversy between the parties by issuing a judgment declaring rights and
26 obligations of the parties with regard to their respective insurance policies.

1 21. Travelers further requests a declaration of rights, duties and/or
2 obligations of the parties as otherwise appropriate, and for judgment for any amount
3 as may be appropriate.

4 **SECOND CAUSE OF ACTION FOR EQUITABLE INDEMNITY**

5 22. Travelers realleges and incorporates herein by reference each and every
6 allegation contained in paragraphs 1 through 21, inclusive, as though fully set forth
7 herein.

8 23. Travelers contends that Safety was and is obligated to defend and
9 indemnify SVP against the Underlying Action. Moreover, Safety's obligation to
10 defend and indemnify SVP is primary to Travelers' obligation.

11 24. Despite multiple tenders, Safety has refused to indemnify SVP.

12 25. Travelers is entitled to reimbursement and indemnification of defense
13 fees and costs incurred in the Underlying Action because Safety's obligation to SVP
14 is primary to Travelers' obligation.

15 **THIRD CAUSE OF ACTION FOR EQUITABLE SUBROGATION**

16 26. Travelers realleges and incorporates herein by reference each and every
17 allegation contained in paragraphs 1 through 25, inclusive, as though fully set forth
18 herein.

19 27. Travelers contends that Safety was and is obligated to defend and
20 potentially indemnify SVP against the Underlying Action. Travelers further
21 contends Safety's obligation is on a primary and non-contributory basis to the
22 Travelers Policy and, as such, Travelers has no duty to defend or indemnify until the
23 limits of the Safety Policy are exhausted. Moreover, Safety's obligation to defend
24 and indemnify SVP is primary to Travelers' obligation pursuant to the respective
25 policies' express terms.

26 28. Despite multiple tenders, Safety has refused to defend SVP.

27 29. Due to Safety's refusal to defend SVP, Travelers has had to incur
28 defense fees and costs, which should have been paid by Safety.

1 30. Travelers is entitled to reimbursement of all defense costs incurred in
2 connection with defending SVP in the Underlying Action.

3 **FOURTH CAUSE OF ACTION FOR EQUITABLE CONTRIBUTION**

4 31. Travelers realleges and incorporates herein by reference each and every
5 allegation contained in paragraphs 1 through 30, inclusive, as though fully set forth
6 herein.

7 32. Travelers pleads this cause of action as an alternative to the equitable
8 indemnity and equitable subrogation causes of action.

9 33. Pursuant to the Travelers Policy, Travelers has defended, and continues
10 to defend, SVP against the Underlying Action. Pursuant to the Safety Policy, Safety
11 owes defense and potential indemnity to SVP as an additional insured in the
12 Underlying Action.

13 34. Safety has failed to defend SVP in the Underlying Action.

14 35. Safety has not contributed to or reimbursed Travelers for the defense
15 fees and costs that Travelers has incurred. Travelers is therefore entitled to
16 contribution and reimbursement from Safety in an amount to be proven at trial.

17 **PRAYER**

18 WHEREFORE, Travelers prays for judgment as follows:

19 1. For a judicial determination that Safety is obligated to defend and
20 indemnify SVP in the Underlying Action on a primary and non-contributory basis;

21 2. For equitable indemnity against Safety for the defense fees and costs
22 incurred by Travelers in connection with the Underlying Action, plus interest;

23 3. For equitable subrogation against Safety for the defense fees and costs
24 incurred by Travelers in connection with the Underlying Action, plus interest;

25 4. In the alternative, for equitable contribution and apportionment of the
26 defense fees and costs incurred by Travelers, plus interest;

27 5. For costs of suit incurred herein; and

28 ///

6. For such other and further relief as the Court may deem just and proper.

Dated: September 22, 2022

USERY & ASSOCIATES

By /s/ William S. Hoang

William S. Hoang

Attorneys for Plaintiff

TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA

DEMAND FOR JURY TRIAL

Travelers hereby demands a jury trial as provided by Rule 38 of the Federal Rules of Civil Procedure

Dated: September 22, 2022

USERY & ASSOCIATES

By /s/ William S. Hoang

William S. Hoang

Attorneys for Plaintiff

TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA